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Message Text

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ACTION SNM-05

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E.O. 11652: NA
TAGS: SNAR
SUBJECT: NARCOTICS LAWS

REF: STATE 170187
B. ASUNCION A-109 DEC. 13, 1977

SUMMARY: PARAGUAYAN NARCOTICS LAWS (NUMBER 357, DATED SEPT. 15, 1972) ARE IMPRECISE AND INCOMPLETE AND GENERALLY UNPREDICTABLE CONCERNING WELL-DEFINED PENALTIES FOR STIPULATED OFFENSES. THIS SITUATION RESULTS NOT ONLY FROM LIMITED EXPERIENCE WITH A NARCOTIC PROBLEM, BUT ALSO FROM A INHERENT STRUCTURAL DEFECT TO CODIFY A SYSTEMATIC BODY OF LAW AND DEVELOP PRECEDENTS. IT MIGHT BEST BE SAID THAT EACH CASE IS CONSIDERED STRICTLY ON ITS OWN MERITS AND IS NOT SUSCEPTIBLE TO AN EDUCATED GUESS. REF.B IMPARTS A SYNOPSIS OF THE LAWS.

1. POSSESSION
A. THE LAW DOES NOT DIFFERENTIATE AMONG VARIOUS NARCOTIC DRUGS. PENALTIES ARE DETERMINED BY THE PRECISE NATURE OF THE CRIMINAL ACT RATHER THAN THE TYPE OF DRUG INVOLVED.
B. THE LAW SPECIFICS THAT A PERSON IN POSSESSION OF ONLY "A MINIMAL QUANTITY FOR EXCLUSIVE PERSONAL USE" MAY BE SUBJECTED TO A DIFFERENT SECTION OF THE LAW. FIRST OR SECOND OFFENDERS ARE NORMALLY PLACED IN CUSTODY OF PARENTS, CLOSE RELATIVES OR GUARDIANS. A ONE-FIVE YEAR
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SENTANCE IS THE PENALTY FOR POSSESSION. PRESUMIBLY A LARGE QUANTITY OF A FORBIDDEN SUBSTANCE WOULD BE REQUIRED TO BRING AN OFFENDER WITHIN THE CONFINES OF THIS PROVISION. THUS PENALTIES FOR POSSESSION - DEPENDING ON THE AMOUNT- ARE NORMALLY LESS SEVERE THAN OTHER NARCOTICS OFFENSES. HOWEVER, THE LACK OF DIFFERENTIATION AMONG USE, POSSESSION AND TYPE COULD CAUSE THE OFFENSE TO BE CLASSIFIED AS

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DISTRIBUTION OR TRAFFICKING.

2. TRAFFICKING
A. PARAGUAYAN LAW CONSOLIDATES ALL CONTROLLED SUBSTANCES INTO THE DANGEROUS DRUGS CATEGORY. THERE IS NO DIFFERENTIATION IN THE LAW. IN PRACTICE HOWEVER, MARIHUANA TRAFFICKING BY FIRST OFFENDERS IS LESS SERIOUS THAN AMPHETAMINES OR COCAINE TRAFFICKING CHARGES.
B. MAXIMUM AND MINIMUM PENALITIES ARE FROM 1-12 YEARS. THERE IS NO MANDATORY SENTENCING REQUIREMENT. NEITHER DOES THE LAW SPECIFY PROVISIONAL LIBERTY REQUIREMENTS, BUT RELEASE OF THE ACCUSED ON BAIL MAY OCCUR. OF COURSE, THE EXERCISE OF BAIL UNDOUBTEDLY WOULD BE CONTINGENT ON THE NATURE OF SEVERITY OF THE OFFENSE.
C. TRAFFICKING OFFENSES ARE CHARGEABLE TO PERSONS DISTRIBUTING DANGEROUS DRUGS EVEN IF A SALE DOES NOT RESULT. ARTICLE 16 OF THE ABOVE REFERENCED LAW PROVIDED FOR TRAFFICKING CHARGES AGAINST PERSONS WHO INCITE OTHERS TO USE AND/OR TRAFFIC. ACTUAL POSSESSION OF A DRUG NEED NOT BE A CONTROLLING FACTOR. SHOULD AN ADDITIONAL CRIME RESULT FROM THE TRAFFICKING OFFENSE, THE PENALTY CAN BE DOUBLED. IF A PUBLIC EMPLOYEE IS INVOLVED HE IS MANDATORILY SUBJECT TO THE MAXIMUM PRISON SENTENCE AND PROFESSIONAL DISQUALIFICATION FOR 10-12 YEARS.
D. THERE IS NO EQUIVALENT OR ANALOGY TO U.S. CONSPIRACY LAWS. HOWEVER, ARTICLE 12 PROVIDES FOR A HARSHER PENALTY
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AGAINST INTERNATIONAL TRAFFICKERS. ARTICLE 13 IS VAGUE BUT COULD BE INTERPRETED TO MEAN THAT A PERSON CAN BE CHARGED WITH TRAFFICKING IN PARAGUAY EVEN WHEN THE DRUGS DID NOT ENTER THE COUNTRY. THE LAW INDICATES THE POSSIBLE IMPOSITION OF A 2-10 YEAR PENALTY.

3. CULTIVATION,PRODUCTION, ELABORATION:
A. ARTICLE 17 PROHIBITS CULTIVATION OF ANY PLANT THAT SERVES AS A BASIC RAW MATERIAL FOR A NARCOTIC SUBSTANCE. PENALTIES FOR VIOLATION OF THIS PROVISION ENTAIL 1-5 YEARS.
OBXB. N/A
C. ARTICLES 18 AND 19 ARE APPLICABLE TO THE ILLICIT PRODUCTION OF NARCOTIC SUBSTANCES FROM RAW MATERIALS. SPECIFICALLY, OWNERS, TENANTS, POSSESSORS, AGENTS AOR WHOEVERBY WHATEVER TITLE USES, DEPOSITS, HARBORS, OR ECCASIONALLY STORES NARCOTIC SUBSTANCES, DANGEROUS DRUNGS, OR PRODUCTS CONTAINING THEM, OR HOLDS ANY OF THE MEANS TO TRANSPROT THESE PRODUCTS IS AMENABLE TO PUNISHMENT.

4. FINANCIAL
A. THERE IS NO SPECIFIC LAW REGARDING FINANCIAL SUPPORT, ALTHOUGH ARTICLES 9 AND 10 COULD BE INTERPRETATED TO

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INCLUDE THE FINANCILA ASPECTS OF ELABORATION AND TRAFFICKING.
THERE ARE NO LEGISLATIVE PROPOSALS OR APPARENT CONCERN TO
RELATE FINANCIAL IMPLICATION TO DRUG INVOLVEMENT.
B. CURRENCY CONTROL LAWS EXIST HOWEVER ENFORCEMENT AND
COMPLIANCE DO NOT.

5. CRIMINAL PROCEDURE
A. INVESTIGATIVE DETENTION COMPRISES A PERIOD OF 72 HOURS.
CONSULAR ACCESS IS GENERALLY PERMITTED.
B. IT IS VIRTUALLY IMPOSSIBLE TO PREDICT A TIME FRAME
FOR PRE-TRIAL DETENTION. THE SEVERITY OF THE CRIME IS
GENERALLY A DETERMINING FACTOR.
C. THE USUAL LENGTH OF TRIAL AND APPELATE PROCESS COULD RUN ANYWHERE
FROM 6 MONTHS-2 YEARS. ASUNCION A-109 PROVIDES
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A DETAILED DISCUSSION OF THE TRIAL PROCESS.
D.LEGAL COUNSEL OF THE "PUBLIC DEFENDER TYPE" IS PROVIDED
GRATIS TO ALL INDIGENT PRISONERS. HOWEVER, A PRISONER
COULD BERY WELL FACE AN INORDINATE DELAY WHILE COURT IN
PRELIMINARY ARRAINGNMENT DETERMINES IF THE PRISONER IS REALLY
DEVOID OF MEANS TO DEFRAY LEGAL EXPENSES.
E. SEE 2.B. ABOVE.
F. INDIVIDULS IN POSSESSION OF VERY SMALL QUANTITIES
OF A NARCOTIC SUBSTANCE MAY VERY WELL BE EXPELLED, ALTHOUGH
THE PERSON MAY REMAIN IN PRE-TRAIL DETENTION BEFORE A
DECISION IS REACHED.

CONCLUSION: THE ABOVE DISCUSSION SHOULD ONLY BE EMPLOYED
AS A GUIDELINE. IT SHOULD NOT BE TAKEN AS A DEFINITIVE
AND FINAL POSITION, PARTICULARLY BECAUSE OF THE LACK OF
PROGRESSIVE GROWTH IN THE LEGAL SYSTEM.
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